

HOUSE No. 2293

By Mr. Sullivan of Fall River, petition of David B. Sullivan for legislation to reinstate job requirements for single-sales factor apportionment. Revenue.

The Commonwealth of Massachusetts

PETITION OF:

David B. Sullivan	Patricia D. Jehlen
Ellen Story	Christine E. Canavan
Anne M. Paulsen	Matthew C. Patrick
Robert P. Spellane	Steven M. Walsh
Antonio F. D. Cabral	Geraldine Creedon

In the Year Two Thousand and Five.

AN ACT REINSTATING JOBS REQUIREMENTS FOR SINGLE-SALES FACTOR APPORTIONMENT.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

- 1 Section 38 of chapter 63 is hereby amended by inserting after
- 2 subsection (m) the following:
- 3 (n) As used in this subsection, the following words shall, unless
- 4 the context otherwise requires, have the following meaning:
- 5 "Adverse economic conditions," six or more consecutive
- 6 months in which total payroll employment in this commonwealth,
- 7 as measured and defined by the Massachusetts Department of
- 8 Labor and Workforce Development, declines.
- 9 "Base period employment level," the number of qualified
- 10 employees of the corporation in this commonwealth as of
- 11 December 31, 2004, and the number of non-qualified employees
- 12 of the corporation in this commonwealth as of December 31,
- 13 2004, determined separately. If the corporation was not engaged
- 14 in business in the commonwealth on December 31, 2004, the base
- 15 period employment level shall be the average employment level

16 for the first two taxable years during which it is engaged in busi-
17 ness in the commonwealth. In the event of the acquisition of a
18 business or line of business or any other corporate restructuring
19 that increases the number of qualified or non-qualified employees
20 of the corporation in this commonwealth, the base period employ-
21 ment level to be applied in the taxable year in which the acquisi-
22 tion or restructuring occurs and in all subsequent taxable years
23 shall be increased to reflect such an increase.

24 “Jobs commitment percentage,” except as provided in para-
25 graph (2), one hundred percent.

26 “Non-qualified employee in the commonwealth,” an individual
27 who: (i) is employed by a defense corporation, a manufacturing
28 corporation, or a mutual fund service corporation; (ii) works on a
29 full-time basis with a normal week of 30 or more hours; (iii) at the
30 inception of the employment relationship does not have a termina-
31 tion date which is either a date certain or determined with refer-
32 ence to the completion of some specified scope of work; (iv) is
33 eligible to receive employee benefits including, but not limited to,
34 paid holidays, vacation and unemployment benefits; and (v) is
35 subject to Massachusetts income tax withholding. Three or fewer
36 individuals who collectively fulfill the requirement of clause (ii)
37 and who each meet the requirements of clauses (i), (iii), (iv), and
38 (v) shall be counted as one non-qualified employee for purposes
39 of this section.

40 “Non-qualified employment level,” the number of non-quali-
41 fied employees of the corporation in this commonwealth in the
42 taxable year.

43 “Non-qualified jobs commitment level,” the base period
44 employment level for non-qualified employees multiplied by the
45 jobs commitment percentage in effect for the taxable year.

46 “Qualified employee in the commonwealth,” an individual
47 who: (i) is employed by a defense corporation, a manufacturing
48 corporation, or a mutual fund service corporation; (ii) works on a
49 full-time basis with a normal week of 30 or more hours; (iii) at the
50 inception of the employment relationship does not have a termina-
51 tion date which is either a date certain or determined with refer-
52 ence to the completion of some specified scope of work; (iv) is
53 eligible to receive employee benefits including, but not limited to,
54 paid holidays, vacation and unemployment benefits; (v) is subject

55 to Massachusetts income tax withholding; (vi) in the case of an
56 employee at a manufacturing corporation, is employed working in
57 the manufacturing corporation's manufacturing operations; and
58 (vii) is not working in a bona fide executive, administrative, or
59 professional capacity under the provisions of 29 U.S.C. 213(a)(1).
60 Three or fewer individuals who collectively fulfill the requirement
61 of clause (ii) and who each meet the requirements of clauses (i),
62 (iii), (iv), (v), (vi), and (vii) shall be counted as one qualified
63 employee for purposes of this section.

64 "Qualified employment level," the number of qualified
65 employees of the corporation in this commonwealth in the taxable
66 year.

67 "Qualified jobs commitment level," the base period employ-
68 ment level for qualified employees multiplied by the jobs commit-
69 ment percentage in effect for the taxable year.

70 (1) Notwithstanding the preceding sections, if, for any taxable
71 year beginning on or after January 1, 2005, a defense corporation
72 as described in subsection (k), a manufacturing corporation as
73 described in subsection (l), or a mutual fund service corporation to
74 the extent of its mutual fund sales as described in subsection (m)
75 does not have a qualified employment level that equals or exceeds
76 its qualified jobs commitment level for the taxable year and a non-
77 qualified employment level that equals or exceeds its non-quali-
78 fied jobs commitment level for the taxable year, the corporation
79 shall apportion its net taxable income to this commonwealth in
80 accordance with subsection (c), unless adverse economic condi-
81 tions have occurred in that taxable year.

82 (2) If adverse economic conditions occur in two or more con-
83 secutive taxable years beginning on or after January 1, 2005, a
84 corporation's jobs commitment percentage for the first taxable
85 year following the most recent year in which adverse economic
86 conditions occurred shall be reduced by five percentage points for
87 each taxable year in excess of one in which adverse economic
88 conditions occurred. The jobs commitment percentage shall
89 increase by five percentage points in each subsequent taxable year
90 until it reaches one hundred percent.

91 (3) The commissioner of revenue shall promulgate regulations
92 implementing the provisions of this subsection.